

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DAVID JAMES R.,

Claimant.

vs

VALLEY MOUNTAIN REGIONAL
CENTER,

Respondent.

OAH No. 2011050354

DECISION

Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings (OAH), State of California, heard this matter in Modesto, California, on May 25, 2011.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Assistant Director of Case Management.

Claimant was represented by his parents.

Evidence was submitted and the record was closed on May 25, 2011.

ISSUE

Should claimant's Infant Development Specialist services be increased from 10 to 15 hours per month?

FACTUAL FINDINGS

1. Claimant was born on August 29, 2008. He is a participant in the Early Start Intervention program (Early Start). He will transition out of Early Start in August 2011, when he turns three years of age. VMRC will determine ongoing regional center eligibility and a transition plan will be completed in June 2011.

2. Claimant's current Individual Family Service Plan (IFSP) was completed on March 2, 2011, at age 30 months, and a review was conducted on April 28, 2011. Pursuant to the IFSP, claimant has been receiving 10 hours a month of Infant Development Specialist (IDS) service, vendored through Debbie Laffranchini, MA. This service is to continue to claimant's third birthday, when he transitions out of Early Start.

3. On March 1, 2011, Ms. Laffranchini completed a report on claimant's progress and recommended that IDS services be increased from 10 to 15 hours a month. In her report, Ms. Laffranchini stated the reasons for her recommendation of an increase in service hours. She wrote:

The MIND Institute assessed [claimant] and he received a diagnosis of being Level 4 in the Autism Spectrum Disorder. [He] is not interested in other children, he does not point to things, he does not bring things to his parents when he thinks something is interesting, and he will not follow their point. Additionally, he does a fair amount of sideways glancing, engages in repetitive motor behaviors including moving his fingers over any lines, becomes fixated at a light, fans, trees moving in the wind, and shadows. He does not initiate any constructive play ideas but spends a great deal of his time wandering about the house. He no longer bangs his head and has reduced rubbing his head on his bed with increased spinning behaviors. Tiptoe walking has decreased.

4. Ms. Laffranchini's report stated that since her last report on November 20, 2010, there had been an increase of three months in claimant's fine motor skills and an increase of two months in his cognitive skills. There was no change in claimant's gross motor skills, no increase in expressive or receptive communication, no increase in self-help skills and no increase in social/emotional skills.

5. Claimant's parents requested that VMRC fund five additional hours per month of IDS service from Ms. Laffranchini. VMRC staff denied the request because the MIND Institute's assessment had recommended a systematic program that uses well-established behavioral principles, such as Applied Behavioral Analysis programs (ABA). The VMRC staff also denied the request for five additional hours of IDS service because Ms. Laffranchini's report did not show the types and kinds of developmental progress one would expect to see with implementation of an ABA program. Claimant's parents filed a Due Process Hearing Request.

6. At hearing, VMRC staff presented persuasive evidence that ABA programming has been a successful intervention for autism and that IDS services, although helpful, do not have the components of the comprehensive ABA program. VMRC staff also provided persuasive evidence that Ms. Laffranchini's report did not show the types and kinds of developmental progress one would expect to see with implementation of an ABA program. Most importantly, VMRC staff provided persuasive evidence that it is legally not permitted to increase funding of a service without evidence that the service is effective.

7. VMRC staff offered to fund a comprehensive ABA program for claimant. Claimant's parents are not presently interested in an ABA program. They are pleased with the services provided by Ms. Laffranchini and wish these services to be augmented by the additional five hours a month she recommended. Claimant's parents and Ms. Laffranchini provided strong evidence at hearing that claimant has made progress with the IDS services. They testified persuasively that very soon after Ms. Laffranchini's March 1, 2011, report, claimant began making "phenomenal" progress in all areas of development. Most importantly, claimant began interacting with his mother for the first time.

8. The testimony of Ms. Laffranchini and claimant's parents, although persuasive, does not provide the data and documentation which regional centers are legally required to gather in order to support extending services. This is particularly true in light of the fact that Ms. Laffranchini's written report demonstrated very little progress. At hearing, it was determined that claimant should have an independent assessment of his developmental progress. VMRC agreed that if the independent assessment demonstrated appropriate developmental progress, VMRC will fund the additional five hours a month of IDS, through the conclusion of claimant's Early Start participation.¹ Unfortunately, the assessment could not be scheduled before the date the decision was due on the Due Process Hearing Request. Accordingly, because of the lack of data and documentation supporting claimant's improvement with IDS programming, VMRC cannot be required to fund five additional hours per month of this service.

LEGAL CONCLUSIONS

1. Government Code section 95001, subdivision (a), provides in pertinent part:

The Legislature hereby finds and declares all of the following;

(1) There is a need to provide appropriate early intervention services individually designed for infants and toddlers who have disabilities or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays.

(2) Early intervention services for infants and toddlers with disabilities or at risk of having disabilities represent an investment of resources, in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by

¹ VMRC agreed that if the independent assessment demonstrated appropriate developmental progress, VMRC will fund the additional five hours a month of IDS, through the conclusion of claimant's Early Start participation, regardless of the outcome of the instant hearing.

minimizing the need for institutionalization. These services also maximize the ability of families to better provide for the special needs of their child. The earlier intervention is started, the greater is the ultimate cost effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities.

2. Pursuant to Government Code section 95016, each eligible infant or toddler shall have an assessment conducted by qualified personnel to identify the child's unique strengths and needs, and the services appropriate to meet those needs. Regional centers and local education agencies shall be responsible for ensuring that the requirements of this section are met.

3. In formulating the IFSP, VMRC assessed claimant's unique strengths and needs, and identified 10 hours a month of IDS service to meet those needs. In order to increase IDS service, VMRC is required to assess whether the service is meeting the claimant's needs. As set forth in the Findings, VMRC is unable to comply with Government Code section 95016, because the documentation provided does not show claimant is making progress and because the MIND Institute assessment recommends another type of program (ABA). VMRC is prohibited from increasing IDS service hours, without first determining, through an appropriate assessment and evaluation, that his IDS service is appropriate to meet his needs.

ORDER

The appeal of claimant David James R. is denied.

DATED: June 8, 2011

Ann Elizabeth Sarli
Administrative Law Judge
Office of Administrative Hearings